U.S. Department of Justice

Immigration and Naturalization Service

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[redacted] prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 07 JAN 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects activity by several different attorneys. In this decision, the term "prior counsel" shall refer to Doris E. Brosnan of von Briesen, Purtell & Roper, who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to Catherine Mayou of Hirson, Wexler, Perl & Stark. The record contains more recent correspondence from Mary Ellen Pisanelli and Peter R. Silverman, both of Shumaker, Loop & Kendrick, but the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative, designating Ms. Pisanelli or Mr. Silverman as the attorney of record. The most recent Form G-28 in the record designates Ms. Mayou as the attorney of record.

The petitioner is a manufacturer of waste treatment systems. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained

national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

Craig Johnson, controller of the petitioning company, describes the corporation and the beneficiary's role therein:

> [The company] designs, manufactures and installs complete waste product treatment and disposal systems. . . . Our clients include paper mills, wastewater treatment facilities, steel mills and other industries that generate a high volume of waste products. . . .
>
> [The beneficiary] is currently working for our company . . . in the position of project manager for an environmental waste recovery technology project in our design and systems engineering department. He has primary responsibility for the development of a portion of our business based on a highly innovative biosolid waste recycling technology aimed primarily at municipal waste treatment facilities. This technology, developed primarily by [the beneficiary] himself, turns raw solid human waste (also known as biosolids or sludge) into a highly effective fertilizer in the form of dry, odorless pellets that can be sold commercially to farmers. . . .
>
> As a project manager, [the beneficiary] is responsible for working with municipalities in designing, installing and commissioning waste treatment facilities that satisfy those municipalities' needs.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

In 1987, the Atlas Aircraft Corporation of South Africa presented the beneficiary with a Silver Award for his development of a solid state aircraft crash recorder. This award appears to be an internal award, with potential recipients limited to individuals who had performed projects commissioned by Atlas Aircraft corporation..

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In 1989, the beneficiary and two colleagues received one of 14 Cullinan Design Awards from the Cullinan Group and the Design Institute of the South African Bureau of Standards, recognizing their Mitralift "as an example of good engineering design." This award, administered by a national government entity, is the most clearly national of the beneficiary's awards.

In 1996, the Arizona Department of Environmental Quality presented the Arizona Pollution Prevention Leadership Enhancement ("APPLE") Award to the Northern Gila County Sanitary District, for which the beneficiary was then the project engineer, for "pollution prevention efforts." The award represents a state award rather than a national or international award.

The International Institute of Inventors and Innovators presented the beneficiary with the Golden Key Award in 1997. Craig Johnson states that the International Institute of Inventors and Innovators is affiliated with Sida, "an internationally recognized organization concerned with major challenges of our era." Accompanying the certificate for the Golden Key Award are printouts from Sida's web site (www.sida.org). The documentation identifies Sida as an agency of the Swedish government, and includes a list of "Sida's working methods and organisation." The documents from the web site include no mention of the International Institute of Inventors and Innovators or of the Golden Key Award, and the award certificate makes no mention of Sida.

In 1998, the beneficiary was nominated for the Environmental Protection Agency's beneficial Use of Biosolids Award. Nomination for an award is not receipt of the award, and the petitioner has not shown that nomination for this award is, itself, a widely recognized achievement (as is the case with nominations for, e.g., an Academy Award or a Grammy Award).

Upon consideration, the Cullinan Design Award appears to satisfy the regulatory criterion, but the initial submission is insufficient to show that any of the other awards so qualify.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The record contains copies of several articles published between 1995 and 1999. The appearance of the beneficiary's name in print does not automatically satisfy this criterion. The repeated use of the word "major" in the regulatory language demonstrates that coverage in local papers with limited circulation cannot suffice. The petitioner has not shown that any of the publications qualify as major media. The publications appear to be newspapers with local circulation (such as the Taos News and the Payson Roundup) and employer newsletters (such as the AWPCA Newsletter and P2

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Opportunities). A number of these articles discuss projects with which the beneficiary is involved, but do not mention the beneficiary himself. These articles cannot be said to be "about the alien" as the regulation demands. Several of the articles indicate that a waste treatment program is the first of its kind in the world, but the articles provide no direct evidence that the method has attracted media attention at a national level, rather than only locally in Payson, Arizona, and Taos, New Mexico.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The record indicates that the petitioner has sought a South African patent for one of his inventions. The record does not even show that the patent was granted, but even if it did, the petitioner has not shown that a patent is *prima facie* evidence of an invention's major significance rather than simply an acknowledgement of its originality.

The petitioner submits several witness letters. Donald H. Graham, specialty services product manager at Aqua Alliance, states:

> [The beneficiary] has made significant original contributions to the field of biosolid and other organic waste management, as he has designed a first-of-its-kind system for beneficially recycling biosolids into organic based fertilizer. [The beneficiary's] system has been implemented in two municipalities so far, with very positive results. . . . [H]is system makes it economically feasible for some 14,000 communities in the United States with populations between 10,000 and 50,000 to treat and dispose of biosolid waste. . . .
>
> [The beneficiary's] process is exceptional because it is the first of its kind to totally recycle organic biosolids without generating solid waste side streams. . . . Instead, the end product of [the beneficiary's] process is a high-grade, environmentally friendly organic fertilizer. Moreover, this organic base fertilizer is safer than the end product of any other solid waste management system, as it contains lower concentrations of heavy metals and fewer disease-causing pathogens than the sludge produced by other treatment systems.

Mr. Graham does not know of the beneficiary by reputation alone; he states that he worked with the beneficiary in 1997 "on a collaborative research project regarding the recycling of organic biosolids."

Stephen W. Dvorak, president of GHD, Inc., states that "accounts of [the beneficiary's] work were familiar to me before I ever had the opportunity to meet [him]," because Mr. Dvorak has "researched thoroughly the 'state of the art' technology in this field." Mr. Dvorak's company and the beneficiary have collaborated on a recent

project, and Mr. Dvorak states "I consider [the beneficiary's] present and potential future contributions to GHD's system design to be both invaluable and irreplaceable."

Leon Romero, wastewater technician with the New Mexico Rural Water Association, states that the beneficiary "is a pioneer in the field" who "has developed a first-of-its-kind technology that totally recycles organic biosolids." Several other witnesses, primarily in the southwestern United States, praise the beneficiary's innovative work and attest to its significant potential.

The nature of the statements, some of them from major officials, attest to the basic importance of the beneficiary's innovations. We find, therefore, that he has satisfied this criterion, while keeping in mind that major original contributions can form only part of a successful claim of extraordinary ability.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The record demonstrates that, at the time of filing, the beneficiary earned $85,000 per year and evidence of other benefits (largely reimbursements for job-related expenses). The petitioner has not demonstrated where this figure stands in relation to others in the field.

We note that, after the initial submission, the petitioner never again mentions the issue of the beneficiary's remuneration. The petitioner appears to have abandoned this claim.

The record establishes that the beneficiary is largely responsible for developing a potentially important new method of waste treatment, which has attracted some attention among U.S. experts. The record, however, does not show that the beneficiary has yet earned significant acclaim in the United States outside of communities in Arizona and New Mexico. Because the beneficiary has spent most of the last several years in the United States, it is not unreasonable to hold the beneficiary to U.S. standards of acclaim.

The limited nature of the beneficiary's reputation is exemplified by two documents which the petitioner has not identified with any of the above regulatory criteria, stating instead that they constitute "comparable evidence" under 8 C.F.R. 204.5(h)(4). Documentation shows that the Northern Gila County Sanitary District nominated the beneficiary for "the 1998 EPA beneficial Use of Biosolids Award," but there is no evidence that the beneficiary ultimately received this award. This supports the conclusion that the beneficiary has won local but not national recognition. Also submitted as "comparable evidence" is a letter showing that, in 1997, the beneficiary served as the chairman of the Biosolids

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Committee of the Arizona Water Pollution and Control Association. Clearly this is a position of local importance but there is no indication that the beneficiary is any more important or well-known than his counterparts in other states, or than others who have chaired committees for the same association.

A third document submitted as comparable evidence is a certificate showing that the beneficiary is a member of the Inventors Assistance League International. The record contains no information about this association to establish the significance of the beneficiary's membership. While one regulatory criterion pertains to "membership in associations in the field . . . which require outstanding achievements of their members," the petitioner has not claimed that this membership fulfills that criterion, and the record contains no evidence that the league requires such achievements. Membership in an association that does not require outstanding achievements does not constitute comparable evidence of acclaim.

Following the initial filing, the petitioner supplemented the record with documentation showing that the beneficiary's application for a Wisconsin Focus On Energy Technical Assistance grant "has been approved for $20,000." The beneficiary was informed of the approval on November 29, 1999, nearly two weeks after the petition's November 16, 1999 filing date. The funds were not disbursed on this date; the letter advises the beneficiary that he "can not begin incurring costs under this grant until a contract has been finalized."

Prior counsel states that the beneficiary's "receipt of this grant demonstrates that the excellence and importance of [the beneficiary's] work has been recognized by yet another organization within the scientific community." As noted above, the beneficiary had not received the grant as of the petition's filing date, and therefore the grant cannot establish eligibility as of that date. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Also, the grant does not show that the beneficiary's "work has been recognized." The evidence plainly shows that the grant is intended to fund research that has yet to commence; it is not an award to recognize the importance of work already completed.

On May 17, 2000, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the beneficiary as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor."

In response to this letter, counsel asserts that the petitioner has satisfied four of the ten regulatory criteria. Counsel asserts that the director should accord more weight to two of the beneficiary's awards. Counsel states that the beneficiary was one of only four recipients of the APPLE Award in 1996. The award was granted by the Arizona Department of Environmental Quality, rather than by any national or international entity. The petitioner has not shown that the award has significant recognition outside of Arizona. While counsel asserts that the award is associated with the U.S. Environmental Protection Agency ("EPA"), counsel also acknowledges that nominees for the APPLE Award are chosen by officials from "local and state government" in addition to individuals in industry and academia.

The only demonstrated connection between the U.S. EPA and the APPLE Award is the award's mention on an EPA web page which focuses on activities in Arizona. This web page states "the mission of the APPLE program is to foster and promote the use of pollution prevention in Arizona," and that "[t]he APPLE Pollution Prevention Awards recognize businesses, institutions, and other organizations in Arizona for outstanding achievements in pollution prevention."

Because the award is plainly limited to entities in Arizona, the pollution prevention workers and organizations in the other 49 states and territories are inherently excluded from consideration. The APPLE Award is a state award, not a national award, and many of the documents publicizing the winners of the award identify the Northern Gila County Sanitary District but not the beneficiary.

Regarding the beneficiary's Golden Key Award, counsel cites a letter from Brian Harmer, vice president of the International Institute of Inventors and Innovators. Mr. Harmer states that the beneficiary received "the highest award in South Africa of the INTERNATIONAL INSTITUTE OF INVENTORS & INNOVATORS, the Golden Key Award. This award is highly acclaimed in the engineering and design community and only one or two a year are given to recipients." This evidence suggests that the Golden Key Award, like the Cullinan Design Award, satisfies the criterion pertaining to national prizes. The Golden Key Award appears to carry greater weight because it, unlike the Cullinan Design Award, pertains to the work in which the beneficiary is now engaged.

Counsel states that new evidence satisfies a previously unclaimed criterion:

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

Counsel asserts that the beneficiary has satisfied this criterion through his registration with the Engineering Council of South

Africa ("ECSA") as a "professional technologist (engineering)." Counsel states "[t]he ECSA requires applicants to undergo a rigorous selection process, where only those candidates who satisfy the committee of their outstanding achievements in the field of engineering are considered for membership." ECSA documentation in the record states "[r]egistration as a professional technologist (engineering) is an honour and recognition of one's professional status in engineering."

One of the beneficiary's fellow registered engineers, Frans Erasmus, states that candidates for ECSA registration and membership must "[h]old an appropriate qualification recognised by the council, or have passed the examinations prescribed by the council," and they must have "performed work of an engineering nature that in the council's opinion is of sufficient variety and of a sufficiently high standard." While an engineer must meet certain standards to qualify for registration, it does not appear that these standards are beyond the reach of all but a small fraction of engineers. Rather, it appears that the registration constitutes an additional layer of professional qualification, as with (for example) board certification for a physician, or national certification of school teachers through the National Board for Professional Teaching Standards.

The notification letter discussing the beneficiary's registration with ECSA is dated July 27, 2000, well after the petition's filing date, and in fact two months after the director's request for evidence. Thus, this registration cannot establish eligibility for a November 1999 priority date.

With regard to published material about the alien, counsel asserts that the articles discussed above "have been resubmitted at this stage in order to draw the Service's attention to the content of the articles." Counsel focuses on the wording of the articles, without addressing the highly relevant issue of whether these articles appeared in "major trade publications or other major media." Regardless of the content of the articles, newspapers with only local circulation, and newsletters that circulate only in local offices, cannot spread the beneficiary's acclaim beyond a limited, local area.

The final criterion addressed in response to the director's request concerns evidence of original scientific contributions of major significance to the field. The petitioner submits several new witness letters.

Dr. Jeffrey C. Burnham, president of the J.C. Burnham Company, states that he has "been working with [the beneficiary] on testing equipment for the new STABLE process in South Africa." Dr. Burnham states that the beneficiary "has become internationally recognized in the wastewater industry due to his innovative and breakthrough development of a new technology that makes it possible to safely use sewage sludge in agricultural fertilizer products." Dr.

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Burnham states that the beneficiary "is one of only a handful of people in the world that has first hand experience of designing and building [this type of sewage processing] plants, and thus is one of the most important and most qualified persons in his field today."

Several other witnesses express support for the petition, and endorse the beneficiary's innovations. For example, J.S. Orchard, director of the United Kingdom-based Euro Iseki Ltd., states:

> We met with [the beneficiary], the leading South African expert in the field, who explained the background of the novel treatment systems that he was developing at the time. We were absolutely astounded and amazed at the implications of [the beneficiary's] technology for use in many of the critical and problematic regions around the world in which our Group has been active.
>
> We immediately saw that the principles of [the beneficiary's] work would have limitless applications in much of the world because of the phenomenal multi-dimensional added benefits that they bring. Nothing like this has ever been achieved before and is truly a groundbreaking technology that has, and will continue to change the course of the worldwide treatment and management of organic waste. . . .
>
> [The beneficiary's] revolutionary technology goes far beyond mere waste management — it carries with it substantive benefits that address many vital universal needs.

Mark Nuzum, president of United Organic Services, "one of the top organic fertilizer marketing companies in the United States," states:

> I have evaluated nearly every marketable organic fertilizer product on and off the market today and found [the beneficiary's] product to be superior in cost of production, physical properties and chemical properties of the end product. [The beneficiary's] technology is nothing short of genius, [and] will alter the course of thinking in this industry for years to come.

Other witnesses attest to the revolutionary nature of the beneficiary's innovation. A number of these witnesses refer to scientific publications regarding the beneficiary's work, but the record does not contain the publications themselves.

The director denied the petition, discussing several perceived shortcomings in the evidence of record. The director found that "the beneficiary is a successful engineer who is respected by those colleagues who have worked with him," but nevertheless the petitioner has not submitted a consistent pattern of evidence to show that the beneficiary is acclaimed throughout his field,

nationally or internationally, as one of the top figures in that field.

The director, in denying the petition, had made specific findings regarding various submissions by the petitioner. For instance, the director noted that "the record [does not] contain evidence that registration as a professional technologist requires outstanding achievements." The director also observed that petitioner has not established that any of the published materials about the beneficiary derive from nationally-circulated publications, as opposed to local newspapers and office newsletters. On appeal, counsel has not addressed any of these specific findings by the director.

On appeal, counsel states that the director "erred in not assigning due weight to the statements by leading scientists and academia." We recognize the statements in question, and the high praise for the beneficiary contained therein. These letters do, in fact, serve to establish the major significance of the beneficiary's original contribution, and thereby they satisfy 8 C.F.R. 204.5(h)(3)(v). The letters cannot, however, form an entirely sufficient basis for approval of the petition. The statute calls for "extensive documentation" of acclaim, and the regulations interpret this language by calling for a variety of documentary evidence.

8 C.F.R. 204.5(h)(4) allows for the submission of "comparable evidence" when the standard criteria do not readily apply to a given field. Counsel contends that the beneficiary's "scientific field is a completely novel scientific field, and therefore, is a field/occupation to which the standards . . . [in 8 C.F.R.] 204.3(h)(3) do not readily apply," and therefore the submission of comparable evidence is appropriate in this instance.

The petitioner, however, has not shown that the original standards do not, in fact, readily apply to the beneficiary's field. Furthermore, having claimed previously that the petitioner has satisfied several of the regulatory criteria, counsel cannot now credibly claim that comparable evidence is necessary because those criteria do not apply. An individual alien's failure to meet the criteria does not establish that the criteria do not apply to the occupation as a whole.

We also note that if the petitioner chooses to define the beneficiary's "field" narrowly as the design of waste processing equipment, then much of the evidence (such as the beneficiary's Cullinan Design Award) necessarily falls from consideration, because that evidence pertains to work that the beneficiary performed before he became involved with waste processing equipment.

Accompanying the appeal is a letter from U.S. Representative Marcy Kaptur, who states:

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> [The beneficiary] is a major scientific authority in the field of waste recovery and organic waste management. He is a pioneer, in a field that is very new and has only a few authorities and recognized leaders. . . .
>
> I know that recovering organic material that is normally destined for landfills or our waterways is a major social and scientific accomplishment. I further understand that the materials that a few years ago were waste products, are now resources. . . . [The beneficiary's] accomplishments are having a profound impact on bioengineering, the environment, organic resource reclamation and agriculture.

Rep. Kaptur echoes counsel's claim that the beneficiary's field is so new that the standard types of supporting evidence are unavailable. We are not persuaded by this argument. Waste processing is not a brand new field; processing plants are in use across the United States and in many countries around the world. Mechanical engineering is, likewise, a well-established field of endeavor. The beneficiary, whose past engineering work has covered a variety of industries, has not created an entirely separate and new field of endeavor by applying his skills to waste processing. Even if the beneficiary had created an entirely new field, he still must have national or international acclaim to qualify for the highly restrictive visa classification sought. Working in more than one country, while winning the respect and admiration of one's collaborators, cannot suffice in this regard.

With regard to Rep. Kaptur's claim that the beneficiary's work is "having a profound impact on bioengineering, the environment, organic resource reclamation and agriculture," the record simply does not support such a contention. The record shows that the beneficiary's work has great potential, but his system appears so far to have been implemented only on a very limited scale. The record documents only two treatment plants in the United States that are already using the beneficiary's technique (Taos and Payson). There is no indication that a significant number of treatment facilities throughout the U.S. or the world have sought to make use of the equipment designed by the beneficiary, or that farms across the U.S. or other countries are already making significant use of the fertilizer generated by the beneficiary's process. While one can certainly foresee circumstances in which the beneficiary's process could have significant impact in the future, it does not follow that the beneficiary has already had such an impact.

In effect, counsel appears to seek to "have it both ways," by stating that the beneficiary has profoundly affected a wide variety of industries and interests, yet his field of endeavor is so new that it is unreasonable for the Service to expect evidence of the types described in 8 C.F.R. 204.5(h)(3).

Counsel states that additional letters from "other key congressional representatives" are forthcoming at some unspecified time in the future. To date the record contains no further such submissions. Furthermore, there is no regulation which allows the petitioner an open-ended or indefinite period in which to supplement the appeal. Indeed, the existence of 8 C.F.R. 103.3(a)(2)(vii), which requires a petitioner to request, in writing, additional time to submit a brief, demonstrates that the late submission of supplements to the appeal is a privilege rather than a right. Any consideration at all given to such untimely submissions, which are not preceded by timely requests for an extension, is discretionary. In this instance, counsel has stated that additional time is necessary, but counsel has not provided any ending point for the requested extension, and has already supplemented the record with a further submission (Rep. Kaptur's letter). Counsel has stated, in essence, that the Service should leave the record open for an unspecified number of future submissions, to arrive at an unspecified time. We cannot honor so vague a request.

The petitioner filed the appeal on November 24, 2000, and submitted its supplementary brief and letter on January 22, 2001, within the 60 days requested. The record reflects no further action by the attorney of record.

The record contains a letter dated February 15, 2001, from Peter R. Silverman of Shumaker, Loop & Kendrick. Mr. Silverman states "[e]nclosed is a declaration by J. Patrick Nicholson, CEO of N-Viro International Corp.," and several accompanying exhibits. This letter had been sent directly to the Service Center director.

Because the appeal had already been forwarded to the Administrative Appeals Office, the letter was returned to Shumaker, Loop & Kendrick and then mailed to the Administrative Appeals Office on March 16, 2001, with a cover letter indicating "[w]e are enclosing the documents that are referred to in Peter Silverman's letter of February 15, 2001." The record, however, does not contain the enclosures themselves.

Even if these enclosures were at hand, they would not have been properly submitted pursuant to 8 C.F.R. 103.3(a)(2)(vii), cited above. At the time of filing the appeal, the petitioner or counsel must either submit any brief or new evidence, or else request a specified period of time to submit them and explain why the extension is necessary. In this instance, the initially requested period of time had already elapsed. Counsel had requested a second, indefinite extension, in order to obtain further documents from unnamed government officials. A letter from a corporate executive, submitted several months later through a different attorney, would not fall under the purview of counsel's second extension request, even if that request had fallen within acceptable parameters.

As we have noted above, the filing of an appeal does not guarantee the petitioner an indefinite or open-ended period in which to supplement the record freely, with no explanation as to why the supplementary submissions did not accompany the initial filing of the appeal. The petitioner's apparent decision to change attorneys does not restart the "clock" for submission of new documents.

In conclusion, we find that while the beneficiary has developed a new process which has significant promise, we cannot conclude that the preponderance of the evidence establishes that the beneficiary had, as of the petition's filing date, earned sustained acclaim at a national or international level. His work has not yet had a significant environmental, agricultural, or economic impact. At best, the filing of the petition appears to have been premature.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the beneficiary has distinguished himself as a project manager or mechanical engineer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the beneficiary shows talent as an engineer, and has invented a process that may well have significant impact at some future time once it is more fully implemented, but the evidence is not persuasive that the beneficiary's achievements already set him significantly above almost all others in his field at a national or international level. We are not persuaded by the claim that the beneficiary has created an entirely new field to which existing standards do not apply. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.